IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

1. S.B. Civil Sales Tax Revision No.63/2007
(M/s Jalani Enterprises Vs. C.T.O., Jodhpur)

2. S.B. Civil Sales Tax Revision No.62/2007
(M/s Jalani Enterprises Vs. C.T.O., Jodhpur)

3. S.B. Civil Sales Tax Revision No.61/2007
(M/s Jalani Enterprises Vs. C.T.O., Jodhpur)

4. S.B. Civil Sales Tax Revision No.64/2007
(M/s Jalani Enterprises Vs. C.T.O., Jodhpur)

DATE OF ORDER : August 30th , 2007

REPORTABLE

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Lekh Raj Mehta with
Mr. Ramit Mehta, for the petitioner.
Mr. Anil Bhansali on behalf of
Mr. N.M. Lodha, AAG for the respondent.

BY THE COURT :

The above four revision petitions are directed against the common judgment dated 11.12.2006 passed by Rajasthan Tax Board, Ajmer and involved identical question of law, therefore, all these revision petitions are being decided by this common order.

According to the facts of the case, the petitioner's Firm was granted exemption certificate on 5.3.1998 for the sale of Jaljira. Under the Incentive Scheme, Masala/Spice fall in the negative list of the scheme and the assessee being a producer of Masala/Spice and being a producer of Jaljira was found eligible to avail benefit under the incentive scheme. The respondent-Department has assessed the petitioner's product as such by levying tax at general rate under residuary entry and not as a Spice/Masala for assesment years 1996-97 to 2000-01. However, the respondent-Department has passed order dated 15.3.2004 for re-assessment under Section 29 of the Rajasthan Sales Tax Act, 1994 for assessment year 2001-02 by holding that Jaljira is a Masala and the same falls in the category of Packed Masala taxable at the rate of 16% under Entry 184 of rate notification dated 29.3.2001 (Annexure-1).

The assessee preferred an appeal against the said order before Dy. Commissioner (Appeals). The Dy. Commissioner (Appeals) vide order dated 1.8.2005 (Annexure-2) held that Jaljira was not a Masala and hence tax levied at general rate of 10% was affirmed and the demand raised by the assessing authority was set aside.

The respondent-Department preferred an appeal before Rajasthan Tax Board against the order dated 1.8.2005 passed by Dy. Commissioner (Appeals). The Tax Board set aside the order dated 1.8.2005 passed by Dy. Commissioner (Appeals) vide impugned order dated 11.12.2005 and restored the orders passed by assessing authority.

While challenging the validity of the impugned orders passed by assessing authority as well as Tax Board, learned counsel for the petitioner argued that in the judgment of learned Tax Board itself in para-9, it is clearly stated by learned Tax Board that petitioner's product Jaljira is not a spice. Therefore, as per the learned counsel for the petitioner, if Jaljira is not a spice/Masala then it cannot fall under Entry 82 and also under Entry 184 and the assessing authority in initial assessment order has rightly levied 10% tax while levying tax at general rate under residuary entry. However, only on the ground that the petitioner is selling Jaljira in packed condition, therefore, the assessing authority as well as learned Tax Board has held that Jaljira falls under Entry 184 but it is not correct.

It is argued by the learned counsel for the petitioner that English Masala is known as 'spice'. The State Government has mentioned eleven types of

spices in Entry 82 and only three of the spices in very small quantities are used to manufacture Jaljira. Jaljira is produced from salts (namak and kala namak) and citric acid which are mineral and chemical substances. These constitutes 75.18% of total ingredients and remaining is very low quantity of spices/masalas which are vegetable products. Therefore, on this count also, the finding of assessing authority as well as learned Tax Board while treating Jaljira as packed masala is totally erroneous.

It is further submitted by the learned counsel for the petitioner that in common parlance Jaljira is known as a mixture of various ingredients to be used in mixing and stirring in water as a pre meal/post meal appetizer and also used in spraying it over fruit salad and fruit chats. It is also considered as drink which is good for digestion, freshness and as a heat reliever. Further, it is submitted that product jaljira is never used as cooking medium for cooking any vegetables. It is not used as an additional constituent for food preparation while on the other hand spices/masalas are used as additional constituents for preparing food. Therefore, it is obvious from the fact that none of spices/masalas can be used as drink by mixing them in water. Jaljira in general trade and commerce has never been understood as a spice/masala and for the

purpose of levying tax, the composition of petitioner's product cannot be ignored which mostly contained salt and citric acids and spices are used in very small quantity. Therefore, the finding of assessing authority as well as learned Tax Board is totally erroneous. According to the learned counsel for the petitioner, the exemption certificate dated 5.3.1989 was duly granted after consideration of the fact that the petitioner's product does not contain any spice/masala and it mostly contains salt and citric acid. Thus, it can only be taxed at general rate at the rate of 10% under residuary entry of notification dated 29.3.2001.

It is contended by the learned counsel for the petitioner that the notification dated 29.3.2001, which specifies Entry 82 and 184, has been superseded by Entry 80 and 186 respectively vide notification dated 22.3.2002 (Annexure A & B respectively). The State Government has amended in Entry 186 that the expression 'Packed Masala', shall be substituted to that of expression 'multi ingredient Packed Masala'. It is vehemently contended that in this notification also jaljira has not been specifically mentioned in the said entry, therefore, intention of the legislature was clear that jaljira cannot be termed as spice/masala.

Learned counsel for the petitioner vehemently argued that under Central Excise Tariff also, the assessess's goods is classified under Chapter Heading 21.08 and not under Chapter 09.03 wherein spices/masalas has fallen and this classification was upheld by CESTAT while confirming the order of DC (Appeals) with the observation that though Jaljira was prepared by adding some spices it cannot be said to be masala as it is never understood, called, taken or accepted as spice or condiments both in trade and commerce as well as in common parlance. Therefore, it is submitted that the petitioner's product which contains very less quantity of spices/masalas and which can be used in the powdered form and also by mixing it in water falls under heading 21.08 of the Central Excise Tariff, thus, the Sales Tax Department cannot take a different view.

It is submitted by the learned counsel for the petitioner that product jaljira does not fall under Entry 184 of notification dated 29.3.2001 even as a drink concentrate, since the product jaljira is used both as a powdered form by spraying it over salads and fruits and it is also used as an appetizer drink by mixing the product in water. Therefore, the finding of learned Tax Board is erroneous which deserves to be quashed.

Lastly, it is submitted that if commodity jaljira falls within the meaning of 'Masala', the Department had not granted incentive to the unit at all. The term 'masala is a wider term and it is essential ingredient for preparing food items, vegetables whereas preparation of food and vegetables without the use of jaljira is possible. It is further submitted that merely some spices are used as raw material that too in a very small quantity for manufacturing jaljira cannot call the petitioner's product as masala. It is also submitted that the petitioner's product jaljira rather falls under Entry 86 which includes the items like ayurvedic medicines and preparations, digestive tablets, churans, powders and liquids where rate of tax is 8%. In these circumstances, while concluding the arguments, it is submitted by the learned counsel for the petitioner that jaljira cannot be termed or defined as spice/masala and respondent Department cannot consider the said jaljira in the category of Entry 184 which is subsequently amended as Entry 186 and cannot levy tax at the rate of 16%. The assessing authority has rightly assessed the tax earlier while treating the jaljira in the residuary category at the rate of 10%. Therefore, merely on the ground that the petitioner's firm is selling jaljira in packed condition, it cannot be termed as packed masala. In general trade and commerce jaljira has never been understood as a

spice/masala. The product is never used as a cooking medium rather it is used as spraying it on fruit salads or mixing it in water and used as an appetizer drink or a post meal/pre meal digestive whereas spices/masalas are never used as digestives and appetizers.

On the other hand learned counsel for the respondent-Department vehemently argued that the grounds raised by the petitioner cannot be accepted because admittedly the petitioner's firm is selling jaljira in packed condition and the assessing authority and learned Tax Board has rightly considered the jaljira under Entry 184 of the notification dated 29.3.2001 in which packed masala is included.

Entry 184 of the notification dated 29.3.2001 reads as follows :

> "184. All kinds of eatables & non-alcoholic potable liquids such as fruit syrups, distilled juices, jams (chatani, murabbas), fruit juices, drink concentrates of all types and forms, essences, concentrates, corn flakes and wheat flakes, custard powder, baking powder, ice-cream powder and packed masala."

It is also submitted by the learned counsel for the respondent-Department that notification dated

29.3.2001 was superseded by another notification dated 22.3.2002 in which Entry 184 of the notification dated 29.3.2001 was re-numbered as Entry 186, which reads as follows:

> "186. All kinds of eatables & non-alcoholic potable liquids such as fruit syrups, distilled juices, jams (chatani, murabbas), fruit juices, drink concentrates of all types and forms, essences, concentrates, corn flakes and wheat flakes, custard powder, baking powder, ice-cream powder and multi-ingredient packed masala."

In the aforesaid Entry, amendment was made by notification dated 16.4.2002 whereby the "packed masala" was substituted by "multi-ingredient packed masala", therefore, the intention of the legislature with regard to levying tax upon packed masala was clarified and the assessing authority and the learned Tax Board has rightly arrived at with the finding that the petitioner's product jaljira falls under Entry 186 of notification dated 22.3.2002.

It is also contended by the learned counsel for the respondents that if the arguments of the learned counsel for the petitioner is accepted that jaljira is an appetizer, then also it can be said that the finding of learned Tax Board became more strengthen because for digestion of masala, the

jaljira is used as appetizer, meaning thereby, it is more concentrated form then the general masala like namak and kala namak. The arguments of the petitioner that the Department is only levying tax under Entry 184 and 186 of the notification dated 29.3.2001 and 22.3.2002 respectively is totally baseless because multi-ingredients of different masalas are used for preparation of jaljira, therefore, it falls in the category of multi-ingredients packed masala as such the petitioner cannot escape from his liability. Therefore, the assessing authority as well as learned Tax Board has rightly arrived at with the finding that the petitioner's product jaljira falls under Entry 184/186 respectively. There is no error in it.

Learned counsel for the respondent-Department submitted that the argument of learned counsel for the petitioner that in Chapter Heading 21.08 of Central Excise Tariff, jaljira is not considered as spice/masala and, therefore, the Sales Tax Department cannot take different view, is not tenable because every Department is having its own provisions for levying tax and when specific notifications have been issued for levying tax by the Sales Tax Department, then at the time of assessing tax only those notifications which have been issued by the Department can be taken into account for the purpose of levying tax. Therefore, this argument of the learned counsel

for the petitioner whereby he is making prayer that as per the order of Dy. Commissioner (Appeals) and CESTAT, the Sales Tax Department cannot take different view. I see no reason to accept such contention because as evident from the facts that the Sales Tax Department has specifically issued notification for levying tax, therefore, the matter is required to be considered in accordance with the notifications issued by the Department itself.

I have considered the rival submissions made by the parties and perused the entire record of the case.

In these revision petitions, the main question arises for consideration of this Court is whether “Jaljira manufactured and sold by assessee in packed form is packed masala falling under Entry 184 of rate notification dated 29.3.2001 and Entry 186 of subsequent notification dated 22.3.2002 or not ?”

In the present case, it is admitted position of the facts that an exemption certificated was issued to the petitioner's Company under RST/CST incentive scheme for sale of jaljira vide exemption certificate dated 5.3.1998 because assessee being not a producer of spice/masala and being a producer of jaljira was found to be eligible unit for grant of exemption and

was not considered as ineligible unit under the incentive scheme. It is also admitted position that the petitioner has already exhausted the exemption in terms of scheme and the exemption certificate long back. It is also admitted position that for the assessment years 1996-97 to 2000-01, the petitioner's product jaljira was considered for tax under residuary entry and 10% tax was levied. The respondent-department passed an order of assessment under Section 89 of the Rajasthan Sales Tax Act, 1994 whereby jaljira sold by the assessee in different packing was considered as masala, therefore, it was considered in the category of packed masala and was made taxable at the rate of 16% and demand was raised against the petitioner. It is true that jaljira cannot be used as cooking medium or cooking any vegetables so also it cannot be used as an additional constituent for food preparation. It is also correct that jaljira is consumed as appetizer and it is not separately used for cooking purposes. Jaljira in general trade and commerce cannot be understood as spice/masala independently because it is composition of many ingredients including specific masalas like namak and kala namak. It is also correct that jaljira is normally used in spraying it over fruit salads and fruit chats. It is also used as a soft drink and good for digestion, freshness and as a heat-reliever. Meaning thereby, from the discussions above, jaljira

cannot be termed as a masala in itself but it is a mixture of masalas and other materials, which can be used for digestion. It is also one of the question, which requires consideration that purposely the word 'jaljira' is not used in Entry 184 and in the subsequent Entry 186 because jaljira is an appetizer and it is also one of the soft drinks, which is consumed mostly by weaker section of the society for digestion. Therefore, in my opinion, the legislature has purposely not included jaljira in Entry 184 and amended Entry 186 independently but the respondent-Department is treating jaljira by way of interpretation under the category of "multi-ingredients packed masala" which is totally wrong interpretation because purposely the legislature or law making authority has not included jaljira in independent capacity, then, how it can be presumed that jaljira can be termed as packed masala for the purpose of tax.

The learned Tax Board vide impugned order has given specific finding in para-9 wherein it is specifically mentioned that "हमारे समक्ष प्रत्यर्थी व्यवहारी द्वारा विक्रय की जा रही वस्तुओं को Spices के रूप में विक्रय किये जाने का प्रश्न नहीं है । हम प्रत्यर्थी व्यवहारी के अधिकृत प्रतिनिधि के इस तर्क से सहमत है कि उसके द्वारा विक्रय की जा रही वस्तुओं में Spices सम्मिलित नहीं है परन्तु यह तथ्य भी निर्विवाद है कि एक से अधिक मात्रा में उनका मिश्रण निश्चित

अनुपात में किया जाकर उन्हें अलग-अलग नाम से पैक किया जाकर विक्रय किया जा रहा है । इन वस्तुओं को मिश्रण के रूप में विक्रय किया जाने पर इन्हें Spices के रूप में माना जाना सम्भव नहीं है तथा राज्य सरकार द्वारा दिये गये स्पष्टीकरण के आधार पर कर निर्धारण अधिकारी द्वारा इन्हें उचित रूप से पैक्ड मसाला माना गया है ।" If such finding is on record, then, how jaljira can be treated to be a spice. Likewise, if purposely jaljira is not included in the Entry, then, the finding of assessing authority as well as learned Tax Board with regard to levying tax at the rate of 16% under Entry 184 and Entry 186 of the rate notifications is erroneous.

For the purpose of just adjudication of the case, the contents of jaljira are required to be taken into account which are as follows :

S.No.	Name of Item	Percentage
1.	Salt	40%
2.	Kala Namak	1%
3.	Nimbu ka Sat(Citric Acid)	8%
4.	Sonth	10%
5.	Kalimirch	10%
6.	Pudina	10%
7.	Hing	1%
8.	Jira	18%
9.	Lalmirch	2%

In view of above contents, Jaljira is nothing but edible preparation ready for use either directly or after dissolving in water, for human

consumption and as it is not used as additional constituent in any food substance, therefore, it cannot be terms as packed masala. Further the name jaljira i.e. “jal” which means water itself suggests that it is something which is to be used in combination with “Jal” i.e. water only, therefore, jaljira is a drink which is offered in various parties, restaurants and in household as a drink before the meals. In these circumstances, jaljira is a drink which is to be used as appetizer.

Obviously, at the time of initial assessment, jaljira was rightly considered and treated to be in residuary category and tax was levied at the rate of 10%, therefore, for the reason that in jaljira, near-about 75.18% ingredients are mineral and chemical substances and remaining material is very low quantity of spices/masala, therefore, in my opinion, jaljira cannot be defined under the category of 'multi-ingredient packed masala' because, it has an independent identity known as 'jaljira', which is used as appetizer. Thus, the finding of assessing authority and learned Tax Board, Ajmer deserves to be set aside and it is held that the respondent-Department cannot treat jaljira under the category of 'multi-ingredient packed masala' because it has independent identity, which is jaljira and can be defined as appetizer for digestion.

In these circumstances, these revision petitions are allowed. The order dated 28.3.2005 passed the assessing authority as well as the order dated 11.12.2006 passed by Tax Board, Ajmer is set aside and the order dated 1.8.2005 passed by Dy. Commissioner (Appeals), Jodhpur is upheld.

(Gopal Krishan Vyas) J.

arun